Financial Ombudsman Service

complaint

Mr M complains that TD Direct Investing (Europe) Limited (TD) sold shares he held without telling him and did not let him postpone the sale.

Mr M wants TD to compensate him for the losses he incurred when the shares were sold. He also wants TD to refund the interest it charged him when he did not settle the trades on time.

background

Mr M placed two orders to buy shares in a company on 31 March 2015. The total cost of the shares was over £106,000.

The trades had a 20 day settlement period. This was clearly set out in the contract notes. Mr M did not fund his account to pay for the shares by the settlement date. This meant his trading account had a negative balance.

TD says that, due to a technical error, it was not aware of the debt until mid July 2015. It then contacted Mr M about the matter. It also emailed Mr M in late July 2015. Mr M then phoned TD. During this call TD explained that Mr M needed to clear the debt. Mr M noted that he was being charged interest on the amount he owed and said he was willing to continue to pay interest in order to keep the position open.

TD agreed to speak to its in-house Credit Team to see if it would be possible for Mr M to keep his position open, without settling his debt. TD agreed to contact Mr M before it sold any shares to clear his debt.

Due to an error on TD's part it did not call Mr M back. Instead it sold the shares to repay the debt on Mr M's account. TD says it took the decision to sell-out his position as it was not willing to keep the trades open indefinitely.

It has noted that the share price of the stock has fallen since the sale. It says its action has prevented Mr M from making any further loss on this investment.

It acknowledged that it should have phoned Mr M to let him know that it was not willing to allow the position to remain open, before it sold the stock. It has apologised for this failing.

In order to resolve Mr M's complaint TD has offered to refund two debit interest charges totalling £1,620.70, and to refund the £40 sell-out fee Mr M was charged when it sold the shares. It also offered to pay Mr M a further £50 for failing to return his call as agreed. In total TD offered to credit Mr M's account with £1,710.70.

Mr M did not accept TD's offer and brought his complaint to this service.

Our adjudicator did not recommend that his complaint should be upheld. He said that he felt TD's offer was fair and he did not think it should do more to resolve this complaint.

Mr M did not accept the adjudicator's view. He raised a number of issues that he felt should be investigated. In summary, he said he thought TD had not suffered a technical fault and that it knew he had not settled his account on time. He said he felt it had allowed his account to remain in debit as it was charging him interest on the money he owed.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I have reached the same view as our adjudicator and for much the same reasons. I'll explain why.

Even if I accept Mr M's view that TD knew he had not settled the trades on time – and I have not seen anything to show that this was the case – the fact remains that Mr M knew he owed TD money.

From the records TD has provided I can see that Mr M logged on to his account regularly during this period. Mr M has not disputed that he knew his account had a negative balance, but did not repay the money owed.

Mr M has said that TD has treated him unfairly as once it came to its attention that his account had a negative balance it sold the shares to repay his debt. He says:

"The firm provides a personal trading limit and T+20 product as well as no timeline in their terms and conditions when deciding to close out. Therefore, this product is inherently unclear – it's like a margin account product with TDW deciding on their own discretion what to do with a stock position."

I don't agree with Mr M's view. It was clear in the terms for the account that Mr M was required to settle his account on time.

The terms and conditions set out:

"At any time that we consider reasonably necessary or desirable including without limitation, if you fail to make any payment or to deliver any investments or transfer documents due to us at the due time for payment or delivery then we reserve the right, without prior notice to you, to: 21.1.1 treat any outstanding transaction as having been cancelled and terminated; 21.1.2 use all money held or debts due to you from any party including ourselves in relation to the Stockbroking Services under these Terms, or any investment, asset or transaction hereunder; 21.1.3 arrange the sale of Investments to provide funds to cover any outstanding amount."

As Mr M had failed to pay for the shares by the settlement date I am satisfied that TD was entitled to sell Mr M's shares to repay his debt. I don't think that the terms and conditions should include a timeline setting out when TD will sell shares to clear a customer's debt. The deadline for settling the trades was the settlement date.

If Mr M had wanted TD to extend him credit beyond the settlement date I think he should have discussed this with TD. I don't think it was reasonable for Mr M to have assumed that TD was aware he had not settled his account on time and was willing to offer his credit indefinitely.

TD has said that Mr M had previously failed to settle his account on time and it had been forced to sell shares to cover his debt. As this is the case I think that Mr M knew that TD would sell his shares if he did not settle his account.

Mr M has said that he finds it suspicious that TD only contacted him about his debt when the share price for the stock he held had started to fall. I think this was purely coincidental. Mr M was free to have sold the sold the stock at a profit, during the period in question, to clear his debt. It was his choice not to do so.

I note that Mr M has asked this service to investigate a number of points he has raised. Having considered Mr M's request, I don't think it is necessary to look into these issues in order to determine this complaint. This service determines complaints based on what we think is fair and reasonable. We are not required to investigate every issue raised.

I don't think that TD needs to prove that it experienced a technical glitch that meant it did not know Mr M had not settled his account on time. As I set out above, I am satisfied that Mr M knew he had not settled the trades by the settlement date and that his account had a negative balance.

I also don't think it was reasonable for Mr M to have assumed that TD was willing to extend him credit beyond the settlement date. He did not ask for TD's consent, or discuss the matter with it until it contacted him in July 2015.

I do agree that TD should have contacted Mr M, to let him know that it was not prepared to allow his account to remain in a negative position any longer, before it sold the shares. But I think the £50 TD has offered Mr M for this service failure on its part is fair.

Having carefully considered this matter, I don't think TD has treated Mr M unfairly. Mr M failed to settle his account on time and as soon as this came to TD's attention it contacted him about the debt. It was not required to agree to Mr M's request not to repay the debt and to allow him to continue to pay interest on the debt.

I simply leave it to Mr M to decide if he now wishes to accept TD's offer to credit his account with a total of £1,710.70. This is made up of a refund of two debit interest charges totalling £1,620.70, the £40 sell-out fee Mr M was charged when it sold the shares and £50 for failing to return his call.

my final decision

My decision is that I do not uphold this complaint as I think the offer TD Direct Investing (Europe) Limited has made is fair in the circumstances of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 August 2016.

Suzannah Stuart
ombudsman